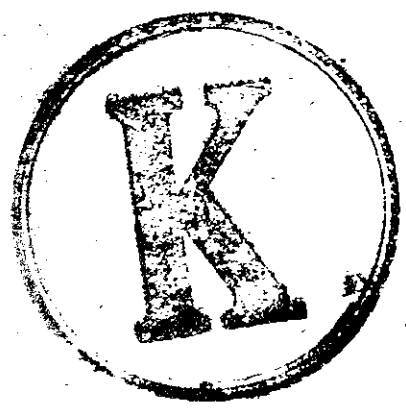
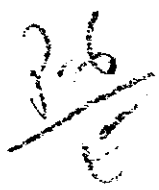
1947. **File No.** O Court Fees 147

Legal Deptt.

A **BRANCH**



**Subject:—** Opinions under the Court Fees Act 1870



**File No.** O. Court Fees 147

Gen. 194 e.

170-A

CONTENTS

Legal Department Vol.No.O.Court fees/1947.


| Sr. No. | Compilation No. | Subject | Pages |
|---|---|---|---|
| | | Opinions under the court fees Act, 1870. | |
| | O.Court fees/1947. | | |
| 1. | R.I.No.392/13-1-47. O.No.1154/3-2-47. | Question regarding filing of an appeal to the High Court against the order of the D.J. where Govt. is not a party to the litigation. (enquiry not made) | 1-2 |
| 2. | R.I.No.2746/10-3-47. O.No.3268/3-4-47. | Question whether an application under sec.16(3) of the Indian Telegraph Act, 1885 is liable to court fee under sec.7(1) of the Court fees Act read with Schedule I thereof. | 13-16 |
| 3. | O.No.4698/7-5-47. | Re: Process fees to be levied on applications under the Bombay Tenancy Act, 1939. Question whether the Mamlatdar determining the reasonable rent under sec. 12 or sec.14A of the Bombay Tenancy Act, 1939, is a Revenue Court. | 17-18 |
| 4. | R.I.No.1642/11-2-47. O.No.4909/14-5-47. | Question whether a Wakalatnama is required to be presented to the Commissioner of Excise in an Abkari case and if so under what Article of Schedule II to Court fees Act, 1870 it should be stamped. | 19-22 |
| 5. | R.I.No.5214/29-4-47. O.No.6271/17-6-47. | Re: Letters of Administration in respect of Joint Hindu Family property - Stamp Duty on - | 23-28 |

No. 3268
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 3rd April, 1947

To,

S. Narayaniah, Esquire, B.A. LL.B.,
Crown Pleader, Presidency Small Causes Court.

Bombay.

Subject:- Application No. 13 of 1947.
Dr. E.S. Moses

Vs.

The Central Government.

Sir,

With reference to your letter No 21/PT/47 dated 6th March 1947, I have the honour to inform you that the view taken by you does not appear to be correct. The Court Fees Act itself makes a distinction between a suit and an application. There is no reason why an application under section 16(3) of the Telegraphs Act, 1885 should be treated as a plaint for the purpose of Court Fees. Moreover under sub-section 5 of section 16 every determination of a dispute by a District Judge is final. This shows that in the event of a dispute as regards compensation, the only remedy of either party is by way of an application under section 16(3) and that the institution of a suit is impliedly barred.

However the R.L.A. has no objection to your passing before the Court the view taken in your letter under reference

Your obedient servant,

Sd/-

O.C.

For Remembrancer of Legal Affairs.

Mjr/5/6

4 Cs.

Office of the R.L.A.

Under section 20 of the Court-fees Act, 1870, the High Court shall make rules as to the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction and by the other Civil Courts and Revenue Courts established within the local limits of such jurisdiction. The question for consideration is whether the Mamlatdar acting under the Bombay Tenancy Act, 1939 (Particularly under Section 12 or section 14A) is a Revenue court. The term "Revenue Court " is not defined in the Court-fees Act; but we find it defined in section 5(2) of the Code of Civil Procedure to mean a Court having jurisdiction under any locallaw to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, and not including a Civil Court having original jurisdiction under the Code to try such suits or proceedings as being suits or proceedings of a civil nature. A Revenue Court must, therefore, be a Court in order that rules framed in respect of process fees be made applicable to proceedings before its A Mamlatdar working under the Bombay Tenancy Act, 1939, cannot be called a Court for this purpose although he may possess the essential characteristics of a Court from a general jural point of view. section 12(6) itself says that the Mamlatdar and even the Subordinate Judge in proceedings under that section shall have the same powers as are vested in Courts. The award of costs by the Mamlatdar or the First Class Subordinate Judge shall be deemed to be a decree of a Civil Court. Similarly, any order passed by the Mamlatdar under section 13 shall also be deemed to be a decree of a Civil Courts Similar provisions are found in the Bombay Agricultural

P.T.O.

Mjr/5/6

No. 4090

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 14th May 1947.

To

The Commissioner of Excise,
Bombay

Sir

With reference to your letter No. 65-30/47, dated the 29th January 1947, I have the honour to state as follows:-

Clause(b) of Art 10 in Sch.II of the Indian Court fees Act 187 0 is clearly inapplicable. As between clause (a) and (c), the latter is more appropriate. "Commissioner" as defined in section 3(3) of the Bombay Abkari Act, 1878, includes an officer appointed by the Provincial Government to be Commissioner for the purposes of this Act. Under section 4 subject to such orders as the Provincial Government or the Commissioner may from time to time make under section 8-A the Collectors are charged with the collection of the Abkari revenue and with the carrying out of the provisions of this Act; and for the purposes of this Act, the Collector of Bombay shall be subordinate to such Commissioner as the Provincial Government directs. It appears that the Commissioner of Excise is the only authority who has been vested with the powers of the Commissioner under the Act . If so, there appears no objection to holding that the Commissioner of Excise is the Chief Executive Authority within the meaning of Clause (c) of Art 10 in Sche II to the Court fees Act, 1870

Yours obedienet servant

Sd/ P.M.Lad
13/5

o.c.

Remembrancer of Legal Affairs.

Through the Revenue Department with reference to that department memorandum No 3834/45.3392-E, dated 10-2-47.

Mjr/5/6

4 Cs.

Debtors Relief Act; and in People's Own Provident & General Insurance Co.v. Guracharya it was held by Mr. Justice Chagla (47 Bombay Law Reportor P. 852) that the very fact that the Legislature had to vest the Board with powers which a Civil Court possesses goes to show that the Board is not a Court, The fact that similar powers which a Civil court possesses are given to the Board by the statute does not constitute it a Court. That was a decision under section 115 of the Code of Civil procedure which also uses the word "Court" occurring in the definition of "Revenue Court" in section 5(2) of the Code. Besides the "Mamlatdar" is defined in the Bombay Tenancy Act, 1939, to include a Mahalkari and any other officer whom the Provincial Government may appoint to perform the duties of a Mamlatdar under the Act. Contrast the provisions of the Mamlatdar's Courts Act where under section 5(1) it is made absolutely clear that every Mamlatdar shall presode over a Court, which shall be called a Mamlatdar's Court, and under section 23(3) of that Act even the Collector taking proceedings thereunder shall be deemed to be a Court. Compare 40 Bombay Law Reporter p 104. The Mamlatdar working under the Bombay Tenancy Act would not, therefore, be a Court and consequently not a Revenue Court. The rules framed by the High Court undersection 20 of the Court-fees Act are not, therefore, applicable . It may be added that process fees are not levied under the Bombay Agricultural Debtors Relief Act also.

Sd/- P.M.Lad

O.C. 7/5/47
Remembrancer of Legal Affairs.

U.R.to R.D. No. 4698, dated the 7th May 1947.

Mjr/5/6

4 Cs.

Office of the R.L.A.

Under section 20 of the Court-fees Act, 1870, the High Court shall make rules as to the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction and by the other Civil Courts and Revenue Courts established within the local limits of such jurisdiction. The question for consideration is whether the Mamlatdar acting under the Bombay Tenancy Act, 1939 (Particularly under Section 12 or section 14A) is a Revenue court. The term "Revenue Court " is not defined in the Court-fees Act; but we find it defined in section 5(2) of the Code of Civil Procedure to mean a Court having jurisdiction under any locallaw to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, and not including a Civil Court having original jurisdiction under the Code to try such suits or proceedings as being suits or proceedings of a civil nature. A Revenue Court must, therefore, be a Court in order that rules framed in respect of process fees be made applicable to proceedings before its A Mamlatdar working under the Bombay Tenancy Act, 1939, cannot be called a Court for this purpose although he may possess the essential characteristics of a Court from a general jural point of view. section 12(6) itself says that the Mamlatdar and even the Subordinate Judge in proceedings under that section shall have the same powers as are vested in Courts. The award of costs by the Mamlatdar or the First Class Subordinate Judge shall be deemed to be a decree of a Civil Court. Similarly, any order passed by the Mamlatdar under section 13 shall also be deemed to be a decree of a Civil Courts Similar provisions are found in the Bombay Agricultural

P.T.O.

No. 2247.

Office of the

Remembrancer of Legal Affairs.

Bombay Castle 17th June 1947

To

The Collector of Nasik.

Subject:- Letters of Administration in respect of Joint Hindu Family Property-- Stamp Duty on.....

With reference to your letter No. STPSR 32/1947, dated the 21st April 1947, on the subject noted above, I have the honour to state as under :-

It is stated in paragraph 4 of the Application that the deceased Ganpat Balaji, at the time of his death, was a member of the coparcenary consisting of himself and his two sons, viz., the Applicant and one Shankar, that the property set out in the Schedule to the Application is the property of the said co-parcenary, that the Applicant and the said Shankar were the joint owners of the same along with the deceased and that the property stood in the name of the deceased as a trustee for the benefit of the beneficiaries of whom the Applicant is one.

As pointed out by Rajadhyakasha J. in A.I.R. (1946) Bom. 163 @ p. 166, it is the character of the property in the hands of the deceased that determines that liability t o the payment of court-fees and if that property in his hands is in the nature of the trust property, the application for the letters of administration with respect to that property is exempt from the payment of stamp.duty.

The full bench decision quoted by the District Government Pleader will therefore apply to the case only if the said property was joint family property in the hands of the deceased prior to his death but not if the same was self-acquired property of the deceased though the same may

P.T.O.

have become Joint family property in the hands of the Applicant and the said Shankar, after the death of the deceased.

The District Government Pleader may, therefore, satisfy himself that the property was not the self. acquired property of the deceased and may, if necessary, call upon the Applicant to adduce evidence in support of their claim that it was joint family property.

Sd/- P.M.Lad
16/6
o.c. Remembrancer of Legal Affairs.

Through

The Commissioner, Central Division, Poona.

Mjr/5/6

4 Cs.